

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 11/05/00 Item: 3.e.

File Number
CP 03-046

Application Type
Conditional Use Permit

Council District
6

Planning Area
Willow Glen

Assessor's Parcel Number(s)
439-01-097

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Anastazia Aziz

Location: Southeastern corner of Dry Creek Road and Cherry Avenue

Gross Acreage: 46

Net Acreage: 46

Net Density: N/A

Existing Zoning: R-1-8

Existing Use: Public School

Proposed Zoning: No change

Proposed Use: Public School and Wireless Communication Monopole

GENERAL PLAN

Completed by: AA

Land Use/Transportation Diagram Designation
Public/Quasi-Public

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: AA

North: Single Family

R-1-5

East: Single Family

R-1-8

South: Single Family

R-1-8

West: Single Family

R-1-5

ENVIRONMENTAL STATUS

Completed by: AA

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated
☐ Negative Declaration adopted

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: AA

Annexation Title: South Willow Glen No. 4

Date: March 24, 1949

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☐ Action
☐ Recommendation

APPLICANT

OWNER

Zachary Carter, Cingular Wireless
PO Box 26460
San José, CA 95159-6460

San José Unified School District
855 Lenzen Avenue
San José, CA 95126

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: AA

Department of Public Works

None received

OTHER DEPARTMENTS AND AGENCIES

Fire Department

None received

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Cingular Wireless Company, is requesting a Conditional Use Permit to allow installation of a sixty-foot tall wireless communication faux tree monopole and four equipment cabinets on a 46 gross acre site in the R-1-8 Residential Zoning District at the site of an existing school. The property is located on the southeastern corner of Dry Creek Road and Cherry Avenue. The proposed faux Redwood monopole is centrally located on the school site near the tennis and basketball courts close to an existing row of Redwood trees which reach almost fifty feet in height. Wireless communication antennas require a Conditional Use Permit in the R-1-8 Residential District.

Surrounding land uses are comprised primarily of single-family residences to the north, east, south, and west.

A 6-foot high vinyl coated chain link fence with access gates will surround the monopole and associated equipment cabinets. Equipment cabinets will be mounted on a concrete pad.

ENVIRONMENTAL REVIEW

Due to the proposed monopole's location and distance from existing residential uses and the public right-of-way, this project was found to be exempt from environmental review per Section 15301..

GENERAL PLAN CONFORMANCE

The site is designated Public/Quasi-Public on the San José 2020 General Plan Land Use/Transportation Diagram. The proposed project conforms to this General Plan designation.

PUBLIC OUTREACH

A notice of the Planning Commission Public hearing were mailed to all owners and tenants of property within a 500-foot radius of the project site. Staff has been available to discuss the project with members of the public.

ANALYSIS

The primary issue associated with this proposal is consistency with the Zoning Code and *Land Use Policy for Wireless Communication Facilities; Council Policy 6-20* (see attached).

Zoning Code

The development standards prescribe a height limit of 50 feet in the R-1-8 Zoning District; however, Section 20.80.1900 allows the maximum height of a wireless communication antenna to reach up to 60 feet provided the antenna is a “slim” pole design. The intent is to minimize the visual impact of the pole.

The proposed 60-foot monopole is not a strict “slim” pole design, but is designed as a Redwood tree and is intended to blend, to the best extent possible, with the existing Redwood trees. In light of the proposed tree design, staff has determined that the proposal meets the intent of the height exception.

Land Use Policy for Wireless Communication Facilities (Council Policy 6-20)

Council Policy 6-20 specifies that new freestanding monopoles should not be implemented where building mounted or collocated facilities are feasible. The applicant has completed an alternatives analysis (see attached) that demonstrates that there are no feasible opportunities in this area to mount the antennas on an existing building or to collocate on an existing monopole.

The Policy also specifies that in instances where new monopoles are necessary, the pole should be designed and located to minimize visibility and additional landscaping or other visual amenities should be considered to compensate for visual impacts of the use.

The proposed location for the monopole in the approximate center of the 46-acre property near the tennis and basketball courts minimizes the visual impacts from the public right-of-ways over 500 feet distant. Additionally, the applicant is proposing a faux Redwood tree design adjacent to existing fifty-foot Redwood trees to offset the visual impacts of the project.

In conformance with the Policy, the equipment cabinets are enclosed by a fence with access gates; setbacks from residential uses are greater than the minimum 50-foot requirement; and the facility will not eliminate required parking. A five-year time condition has also been included in the Permit in conformance with the Policy recommendations.

Based on this analysis, staff concludes that the proposed project conforms to the Council Policy and is compatible with the surrounding neighborhood.

RECOMMENDATION

The Planning staff is recommending that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project.

1. This site has a designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Residential Zoning District.
3. The project is exempt from environmental review under Section 15301.
4. Single-family detached residential uses generally surround the site.

5. The applicant is requesting a Conditional Use Permit (CUP) to allow installation of a wireless communications antenna faux tree monopole and four equipment cabinets centrally located on the San José Unified school district property.
6. The monopole will be sixty feet in height and will incorporate a faux Redwood tree design and be located proximate to existing 50-foot tall redwood trees to mitigate impacts.
7. A 6-foot vinyl clad chain link fence with access gates will enclose all equipment.
8. The applicant has completed an alternatives analysis that adequately demonstrates that there are no feasible opportunities in this area to mount the antennas on an existing building or to collocate on an existing monopole.
9. The wireless communications antenna monopole will be located a minimum of 50 feet horizontally from nearby residential uses.
10. In conformance with Council Policy 6-20, the freestanding monopole conforms to the zoning's height requirements, and the facility will not eliminate required parking.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project conforms to applicable criteria of the *City Council Land Use Policy for Wireless Communications Facilities*.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:

- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
- b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Willow Glen Middle School SF-966-02", dated October 4, 2002 and last revised December 3, 2002" on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
2. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property.
5. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.

6. **Utilities.** All new on-site telephone and electrical service facilities shall be placed underground.
7. **Colors and Materials.** All wireless communications antennas colors and materials are to be those specified on the approved plan set.
8. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP03-046, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
9. **Hazardous Materials.** The applicant shall submit names and amount of any hazardous materials to be used or stored within the project site to the Hazardous Materials Division (277-4659). Use or storage of hazardous materials, liquids, gases and/or chemicals are subject to the requirements of the Hazardous Materials Storage Ordinance, the Toxic Gas Ordinance, the applicable sections of the San José Fire Code, and the National Fire Code.
10. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, wall and fence surfaces within 48 hours of defacement.
11. **Collocation.** The applicant and wireless communication facility operator shall facilitate the future collocation of wireless communication antennas on this monopole. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennas on this monopole. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit.
12. **Monopole Removal.** The applicant shall remove the monopole and associated equipment and enclosure from the site at such time as the pole is no longer used to support a wireless communication antenna.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
3. **Time Limit.** This Planned Development Amendment Permit expires and has no further force or effect five years from the date of this Permit. At that time, that applicant/owner shall provide information to the City so that we may determine if the monopole is still needed, based on possible improvements in technology.
4. **Renewal.** The permit holder may seek renewal of a time-conditioned Planned Development Amendment Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Planned Development Amendment Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Planned Development Amendment Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
- c: Skip Przyborowski, Cingular Wireless, 4420 Rosewood Dr., Bldg. #2, 3rd Floor, Pleasanton CA 94588

AA